

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17349 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANIBA CHANDANSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17349 of 2003
MR JV JAPTEE for Petitioner No. 1-3
NOTICE SERVED for Respondent No. 1-2
MR RN JADEJA for Respondent No. 3-4
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 01/12/2004

ORAL JUDGEMENT

#. Rule. Mr.R.N.Jadeja, learned advocate waives service

of rule for the respondents.

#. In this petition filed under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 17.8.2002 passed by the learned Joint District Judge, Sabarkantha at Himatnagar in Civil Appeal from Order No.59 of 1999 in dismissing the same and confirming the order passed by the trial Court dated 30.7.1999 below Exh.5 in Regular Civil Suit No.187 of 1998.

#. Both the courts below have concurrently found that the respondents - original defendants to be in possession of the land in question, and, therefore, application Exh.5 submitted by the petitioners - original plaintiffs came to be dismissed. This is a petition under Article 227 of the Constitution of India and this Court is not required to reappreciate the evidence on record. As held by the Honourable Apex Court in the case of Surya Dev Rai Vs. Ram Chandra Rai, reported in (2003)6 SCC 675, this Court is not required to reappreciate the evidence on record unless and until there is a grave injustice and the order passed by the trial Court is without jurisdiction, then and then only powers under Article 227 of the Constitution of India are required to be exercised considering the facts of the case. Considering the aforesaid facts and scope of the powers of this Court under Article 227 of the Constitution of India, the present petition is required to be dismissed. However, in the facts and circumstances of the case, the trial Court is directed to decide and dispose of Regular Civil Suit No.187 of 1998 as early as possible preferably within a period of one year from the date of the receipt of the writ of this order subject to cooperation given by all the concerned parties. It is also made clear that any observations made by both the courts below are to be treated as the observations while deciding the interim application only and ultimately it is for the trial court to decide the suit on merits and on the basis of the evidences which are to be adduced.

#. With these observations and directions, the present special civil application is dismissed.

(M.R.Shah, J)

(pathan)